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10 Attorneys for Defendants
11 NATIONAL INVESTMENT CONSULTANTS, INC.,
12 And WEI M. TSE a.k.a. RAYMOND TSE, and for
Relief Defendant THERESA C. WONG

**UNITED STATES DISTRICT COURT
NORTHERN DIVISION OF CALIFORNIA
SAN FRANCISCO DIVISION**

**U.S. COMMODITY FUTURES TRADING
COMMISSION and THE COMMISSIONER OF
CORPORATIONS OF THE STATE OF
CALIFORNIA,**

Plaintiffs,

VS.

NATIONAL INVESTMENT CONSULTANTS, INC, a California corporation, PACIFIC BEST GROUP LTD, a.k.a. PACIFIC BEST COMPANY LTD, a British Virgin Islands Corporation, YI KERRY XU, an individual, RUN PING ZHOU a.k.a. FLORA ZHOU, an individual, and WEI M. TSE a.k.a. RAYMOND TSE, an individual,

Defendants,

and

THERESA C. WONG, an individual,

Relief Defendant.

CASE NO.: 052641 JSW

Assigned to Hon. Jeffrey S. White

**DECLARATION OF JIAN XIAO IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

DATE: August 26, 2005
TIME: 9:00 a.m.
DEPT.: 2

DECLARATION OF JIAN XIAO

1 I, JIAN XIAO, hereby declare,

2 1. The facts declared below are known to me through personal knowledge. If called
 3 as a witness in the matter entitled U.S. COMMODITY FUTURES TRADING COMMISSION and
 4 THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA vs.
 5 NATIONAL INVESTMENT CONSULTANTS, INC. et al., Case Number 05-2641 JSW
 6 (hereinafter the "Litigation"), I could and would competently testify to the following:

7 2. I am a resident of Oakland, California, and I am the Manager and Owner of
 8 Defendant National Investment Consultants, Inc. ("NICI"). NICI was incorporated in California
 9 on February 2, 2004, and has its principal place of business at 300 Montgomery Street, Suite 660,
 10 San Francisco.

11 3. I am, and at all times was, the sole owner and operator of NICI. NICI is a
 12 corporation in good standing and it has not been the subject of any complaints other than those at
 13 issue in this matter.

14 4. On June 1, 2004, Pacific Best entered into an agreement with NICI whereby NICI
 15 was to act as an "introducing broker" for Pacific Best. Pursuant to this agreement, NICI acted as a
 16 service agent for Pacific Best by introducing clients to Pacific Best for the purposes of spot
 17 trading. The customers that NICI introduced to Pacific Best executed Customer Agreements with
 18 Pacific Best and were clients of Pacific Best, not NICI. NICI provided client services such as
 19 providing market information, communication and order placing with Pacific Best. However, at
 20 all times customers could place orders directly with Pacific Best and were not required to utilize
 21 NICI to place trades.

22 5. NICI and Pacific Best do not have any corporate relationship, they are not parent or
 23 subsidiary and they do not have any officers or employees in common.

24 6. In or around July, 2004, NICI purchased a customer list from South China with
 25 some, but not all, customer information. NICI did not purchase any other assets or liabilities from
 26 South China.

- 1 7. Mr. Tse is not and has never been an employee of NICI but he did perform
- 2 consulting and held some meetings for NICI explaining the policies of Pacific Best.
- 3 8. NICI trainees were never instructed to advise customers that they did not have to
- 4 pay taxes if they deposited funds in cash.
- 5 9. NICI trainees were never instructed to inform customers that their deposits were
- 6 insured by the FDIC.
- 7 10. All customers were informed that NICI did not keep their money and that the
- 8 money was forwarded to Pacific Best. Pacific Best issued daily confirmation statements to NICI
- 9 reflecting all monies going in and out of the account as well as all foreign currency transactions
- 10 executed on behalf of the customers. NICI provided these statements to the customers on a daily
- 11 basis. These statements provided an accurate summary of each customer's gains and losses.

11. NICI employees were instructed to advise customers of the risks involved in foreign
12 currency trading. Customers were never told that they could not lose money or that their
13 investments were guaranteed. In fact, the Customer Agreement specifically outlines these risks.
14 All customers maintained their Customer Agreements in their own possession.

16 I declare under penalty of perjury under the laws of the United States of America and the
17 State of California that the foregoing is true and correct.

18 Executed this 1 day of August, 2005, at San Francisco, California.


Jian Xiao